

CONSOLIDATED CRUDE OIL CO.

IBLA 80-46

Decided December 10, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring oil and gas lease MT 061597-A (ND) Acq. terminated for failure to pay annual rental timely.

Affirmed.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of production terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A net credit balance reflected in statements of account covering other leases does not constitute payment of the annual rental for the subject lease, absent a written request, timely received, that monies from a particular account be applied as the rental payment for the lease.

APPEARANCES: Gary G. Broeder, Esq., Davidson, Veeder, Baugh, Broeder & Poppler, Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Consolidated Crude Oil Company appeals from the September 7, 1979, decision of the Montana State Office, Bureau of Land Management (BLM), declaring oil and gas lease MT 061597-A (ND) Acq. terminated for failure to pay annual rental timely.

Effective February 1, 1964, BLM issued noncompetitive oil and gas lease to Robert C. Balsam. The lease covered 1,264.37 acres of acquired

land in McKenzie County, North Dakota. ^{1/} Effective June 1, 1964, 80 acres of the lease were assigned to Amerada Petroleum Corporation. By decision of September 14, 1966, Amerada was informed that the lands embraced in its lease were within a known geologic structure. As a result, the annual rental was increased to \$2 per acre per year. Effective February 1, 1972, Amerada Petroleum Corporation assigned the 80 acres to appellant.

The September 7, 1979, BLM decision declaring the lease terminated by operation of law effective February 1, 1978 stated:

Oil and gas lease MONTANA 061597-A(ND) Acquired was issued effective February 1, 1964, for a ten-year term ending January 31, 1974. Effective as of December 6, 1967, the lease account was transferred to the jurisdiction of U.S. Geological Survey at their request which stated the lease was subject to compensatory royalty effective January 1, 1967.

A report from U.S. Geological Survey states the lease is subject to compensatory royalty and advance rental payments and that the payment for the lease year beginning February 1, 1978 was not received by their office.

The Geological Survey (Survey) report dated February 3, 1978, and referenced in the BLM decision, adds that the lease is subject to automatic termination upon failure to pay rental.

In its statement of reasons, appellant asserts that accounting errors may have occurred because of the large amount of money appellant pays to Survey regarding the subject lease and nine other leases in the area. Appellant states that its own records could not be reconciled with Survey's. Because appellant had an overall net credit balance above the lease rental due appellant claims that it had tendered the amount due which was accepted by Survey.

As a result of appellant's assertions, this Board issued an order requesting comments from Survey and "information concerning the status of the lease rental and royalty accounts, including details as to the amounts due, time and amount of payments for compensatory royalty or advance rentals, and the accounting system used." Information showing the specific payment of rentals on this particular lease were requested from appellant.

^{1/} The land is located in secs. 18, 19, and 20, T. 149 N., R. 96 W., fifth principal meridian, and sec. 2, T. 149 N., R. 97 W., fifth principal meridian.

In response, appellant could not supply information that it had requested that specific monies be directed toward payment of the lease rental. Instead appellant reiterated that confusion exists regarding the application of funds paid to Survey under the various leases and that sufficient money was received by Survey to cover the amount due.

Survey's response was that the subject lease account did not contain sufficient money to cover the annual rental payment due on February 1, 1978, and that appellant made no request that funds from any other account be transferred to cover that payment.

Section 31 of the Mineral Leasing Act, as amended by Act of July 29, 1954, 30 U.S.C. § 188(b) (1976), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease shall terminate automatically by operation of law. The regulations in 43 CFR 3108.2-1 implement this statute. Furthermore, section 17 of the Mineral Leasing Act, 30 U.S.C. § 226(d) (1976), requires that annual rental for oil and gas leases must be paid in advance. Rose M. Keegel, 49 IBLA 106 (1980).

Appellant was unable to demonstrate, either in the statement of reasons or in its response to our order, that it paid the lease rental. A net credit balance reflected in statements of account covering other leases does not constitute payment of the annual rental for this particular lease. Appellant cannot expect Survey to transfer monies among several accounts to cover appellant's deficiencies without expressed authorization. See, e.g., Wilfred Plomis, 51 IBLA 125 (1980). It is appellant's responsibility to insure that payments are timely made. Absent timely payment the lease terminated automatically by operation of law.

Appellant notes the existence of a 19-month delay between the 1978 lease anniversary date and the September 7, 1979, BLM decision declaring the lease terminated and contends that such a delay is inconsistent with the position that the lease terminated. By the express terms of the statute, termination of a lease for failure to pay rental on or before the anniversary date is automatic and occurs without any administrative act, deed, or decision of any Departmental employee. David Fasken, 48 IBLA 258, 261 (1980); 30 U.S.C. § 188(c) (1976).

Appellant alleges that it has continued to make compensatory royalty payments on this lease.
2/ Since the lease terminated by operation

2/ Appellant submitted a check to Survey dated January 2, 1980, in the amount of \$160. The check was apparently for the 1980 lease rental. Survey returned the check by letter of January 17, 1980, referencing the BLM decision of September 7, 1979.

of law on February 1, 1978, any compensatory royalty, payments made after that time should be refunded to appellant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge

